THE ILLINOIS TEN-HOUR DECISION[1]

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IT was a unique episode in the history of American labor legislation, when in February, 1910, two distinguished lawyers joined the state officials of Illinois in a defense of the ten-hour law before the state supreme court. Both gentlemen—Mr. W. C. Calhoun, the then newly appointed ambassador to China, and Mr. Louis D. Brandeis of Boston, who had won prestige in successfully defending a similar law before the United States Supreme Court two years earlier—gave their services, a free gift to the wage-earning women of Illinois, and to those of such other states as may establish by law the ten-hour day in industry, in consequence of the favorable Illinois decision.

The statute in behalf of which these two public-spirited lawyers appeared, at great personal sacrifice, was enacted by the legislature of Illinois in 1910, and restricts to ten hours the working day of women employed in factories, mechanical establishments and laundries.

Similar legislation has been in force in England since 1847, in Switzerland since 1877, in Germany since the early nineties, in France since the beginning of the present century. In our own country, Massachusetts enacted a ten-hour law as early as 1876, and the supreme courts of four states—Massachusetts, Nebraska, Washington and Oregon—as well as the Supreme Court of the United States itself, have sustained the constitutionality of such laws.

Why then should a measure, so long tested by human ex-

[1] [By special request of the editor, Miss Goldmark has prepared this brief comment on the Illinois decision, pointing out its practical lessons without discussing the legal points involved. As is well known to students of protective legislation, only the remarkable work of Miss Goldmark in collecting and marshaling the mass of evidence scattered in all sorts of documents both in this country and abroad made possible the briefs that resulted in the sustaining of both the Oregon and the Illinois law.—EDITOR.]

perience and so obviously necessary in Illinois, the third manufacturing state in the Union, require so earnest and determined a defense? The answer to this query is found in the favorable decision of the Illinois Supreme Court, handed down in April, 1910. It was the necessity of putting the case so strongly before the court that it might reverse its earlier decision of 1895. Fifteen years ago, the Supreme Court of Illinois in what is known as the case of Ritchie *v.* The People, held that no restriction whatever could be placed upon the working hours of adult women employed in manufacture. The earlier statute had established the eight-hour day for women employed in manufacture. It was held unconstitutional and void, as a violation of individual freedom of contract. The present statute establishes for the same classes of workers the ten-hour day. The same principle is involved in both laws, namely, that the working hours of adult women may be restricted by the legislature.

In its recent decision, holding that the ten-hour statute is a valid exercise of the police power of the state and is not in violation of the constitution of the state of Illinois, the supreme court lays stress upon two points: first, that the present statute is a health measure and is so described in its title and in its text, while neither the title nor the text of the former eight-hour law, annulled in 1895, specifically stated its relation to the subject of health; second, that the present statute permits ten hours' work in twenty-four, while the former one permitted but eight hours. These two points call for scrutiny and consideration. In future every ten-hour bill for women should be entitled a health measure, as in fact it is. This precaution costs neither time, money nor effort. Yet it may save the law when on trial before a court of last resort upon the charge of unconstitutionality.

The second point is more difficult. If in general the principle is accepted that statutes restricting the working hours of adult women must be obviously and convincingly health measures, then the enactment of future eight-hour bills and nine-hour bills might well be accompanied by the preparation of briefs showing the necessity for the statutory shortening of the work-

ing day as overwhelmingly as the Brandeis brief filed in the Illinois case proved the point in the present instance. The specific statement in the present decision that what judges know as men, they cannot profess to ignore as judges, emphasizes the need of presenting to them the underlying social and medical facts upon which legislation restricting women's working hours is fundamentally based.

The effectiveness of this procedure is shown by the experience of the past two years. In January, 1908, Mr. Brandeis filed with the Supreme Court of the United States, in defense of the Oregon ten-hour law, a brief of one hundred and twelve pages, showing the action and opinion of European nations and some American states governing the working hours of women in the interest of the public health. His oral plea on that occasion followed the same lines. The decision of the court, written by the late Justice Brewer, was unanimous, sustaining the statute and specifically stating that the court took "judicial cognizance" of the "facts of common knowledge" brought before them. In the recent Illinois case, Mr. Brandeis's brief contained more than six hundred pages of similar information gathered during the past year by the writer under an appropriation from the Russell Sage Foundation.

These two decisions pave the way for an immediate nation-wide campaign for the ten-hour day for women employed in factories, mechanical establishments and laundries in all those industrial states which have not yet enacted such laws. A similar campaign is sorely needed in many states in order to extend to women in stores, offices, telegraph and telephone services, trade and transportation, the benefits already enjoyed by their sisters employed in manufacture.

The National Consumers' League has already enlisted for this campaign, placing well to the fore in its program for the decennial period 1910–1920 the enactment of such laws.